



**Todd & Weld**LLP

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March 4, 2022

**VIA ECF**

Honorable Loretta A. Preska  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

**Re: *Giuffre v. Dershowitz*, Case No.: 19-cv-03377-LAP  
S.D. Fla. Order Prohibiting Production of Netflix Documents**

Your Honor:

We learned last evening that, despite Your Honor's Order, the United States District Court in Florida has ordered that Prof. Dershowitz is prohibited from producing the Netflix documents Your Honor has ordered him to produce. We write to update the Court and seek its direction.

Your Honor will recall that at a hearing on February 25, 2022, after hearing from counsel for the Netflix Nonparties, Your Honor ordered Prof. Dershowitz to produce to Plaintiff in this case all documents produced by the Netflix Nonparties in the *Dershowitz v. Netflix* action, with the exception of a small number of documents with Plaintiff agreed need not be produced. A transcript of that hearing is attached hereto as Exhibit A. Your Honor also ordered that the parties to this case were to sign on to the *Netflix* protective order and agree to a form of stipulation for that protective order to be entered in this action, and further ordered counsel for the Netflix Nonparties to supply a list of documents that, pursuant to Plaintiff's agreement, were to be excluded from the production.

Thereafter, counsel for Prof. Dershowitz, Plaintiff, and the Netflix Nonparties conferred via email this past week on the form of stipulation by which this Court would adopt the *Netflix* protective order. Counsel for the Netflix Nonparties on Wednesday provided a list of documents to be excluded from the production, and with that list in hand (and once the stipulation had been finalized), Prof. Dershowitz was prepared to complete production of the documents by the end of this week.

We learned last night that notwithstanding this Court's order and the parties' cooperation last week towards complying with that Order (and notwithstanding Ms. Strom's stated position that the *Netflix* protective order did not prohibit production of Netflix's documents in this case pursuant to a valid order of this Court), at a discovery conference held in the *Netflix* action yesterday, **the Netflix Nonparties sought and received an order prohibiting Prof. Dershowitz from producing their documents in this case pursuant to this Court's February 25 Order.** The order was made from the bench, is not yet reflected on the docket, and a transcript of the

**Todd & Weld** LLPHon. Loretta A. Preska  
March 4, 2022  
Page 2 of 2

hearing is not yet available (although one has been ordered on an expedited basis). We thus do not know the precise language of the Order or fully appreciate the context in which it was made.

At present, Prof. Dershowitz is left with the choice of either complying with this Court's Order and violating the *Netflix* court's order, or vice versa. Moreover, Prof. Dershowitz's counsel in the *Netflix* action will not provide the Netflix documents to us for production in this case while the *Netflix* court's order prohibiting their production remains in force.

We also would like to correct a representation made by counsel for the Netflix Nonparties, Rachel Strom, to Your Honor, in connection with this matter. It is now clear that Prof. Dershowitz committed **no violation whatsoever of the notice provision of the *Netflix* protective order, inadvertent or otherwise**. Investigation subsequent to this Court's February 25 hearing has revealed that Plaintiff's Fourth Set of Requests for Production in this case, which included the requests for any documents produced by the Netflix Nonparties, and Prof. Dershowitz's responses and objections to the same (in which he objected to producing *any* of the Netflix Nonparties' documents), all took place *before* there was a protective order entered in the *Netflix* case. The requests and responses were served on August 18, 2021 and September 17, 2021, respectively. The *Netflix* protective order was not filed or entered by the court in the *Netflix* action until *November 18, 2021*. Prof. Dershowitz could not have breached a notice provision which did not yet exist at the time Plaintiff served the requests which allegedly triggered that provision. Prof. Dershowitz has been caused substantial expense in responding to repeated threats from Netflix's counsel about seeking sanctions for his failure to give notice under a protective order, which turns out did not exist at the time.

Prof. Dershowitz respectfully requests the Court's guidance regarding this matter.

Respectfully submitted,

/s/ Christian G. Kiely  
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cc: All counsel of record, via ECF  
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